

**C Madumere**  
**First Witness Statement**  
**CM1**  
**On behalf of the Claimant**  
**23 April 2021**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. [NUMBER]**

**BUSINESS AND PROPERTY COURTS OF  
ENGLAND AND WALES**

**COMMERCIAL COURT (QBD)**

**IN THE MATTER OF THE ARBITRATION ACT  
1996**

**AND IN THE MATTER OF AN ARBITRATION**

**B E T W E E N:**

**THE FEDERAL REPUBLIC OF NIGERIA**

**Claimant (Respondent in the arbitration)**

**- and -**

**ZHONGSHAN FUCHENG INDUSTRIAL INVESTMENT CO. LTD.**

**Defendant (Claimant in the arbitration)**

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**WITNESS STATEMENT OF CHIKWENDU MADUMERE**  
*in support of the Claimant's Application*

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***Without waiver of and without prejudice to immunities or privileges***

I, **CHIKWENDU MADUMERE**, of Madumere & Madumere (“**M&M**”), 79, Adetokunbo Ademola Crescent Wuse 2, Abuja, Nigeria, **WILL SAY** as follows.

**1. INTRODUCTION**

- 1.1 I am the Managing Partner and co-founder of M&M and practice law from my firm's office in Abuja, Nigeria. I am called to the Nigeria bar and am a fellow of the Chartered Institute of Arbitrators with significant experience in domestic and international arbitration. I regularly sit as an arbitrator. I hold a master's degree with distinction in Petroleum Law and Policy from the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP), University of Dundee, Scotland, where I am also studying to be a Doctor of Philosophy specialising in the UNCITRAL Arbitration Rules 2013 and Transparency.

- 1.2 I make this witness statement on behalf of the Federal Republic of Nigeria (“**FRN**”) and confirm that I am duly authorised to do so.
- 1.3 CMS Cameron McKenna Nabarro Olswang LLP (“**CMS**”), who I understand to be the solicitors for FRN, the Claimant, have assisted me as to the structure, layout and scope of the statement and have taken primary responsibility for drafting it based on evidence provided by me in interviews and in exchanges of email correspondence.
- 1.4 This statement is made in support of FRN’s application pursuant to section 67(1)(b), alternatively (a) of the Arbitration Act 1996 (the “**Act**”) to challenge a final award of an arbitral tribunal dated 26 March 2021 (the “**Award**”) in arbitration proceedings commenced by Zhongshan Fucheng Industrial Investment Co. Ltd as Claimant (“**Zhongshan**”) against FRN as Respondent (the “**Arbitration**”) pursuant to the Agreement Between the Government of the People’s Republic of China (“**PRC**”) and the Government of FRN for the Reciprocal Promotion and Protection of Investments (the “**BIT**”). M&M was counsel for FRN in the Arbitration and I was its lead advocate with conduct of the Arbitration for FRN.
- 1.5 Attached to this witness statement and marked “**CM1**” is a bundle of paginated copy documents, to which I shall refer in the course of this statement. References to page numbers herein are references to the pages of the exhibit to this witness statement, “**CM1**”. Where I refer to documents that are contained within the documents file marked “**CM1**”, such references are marked “[**CM1/pages[s]**]”.
- 1.6 Save where expressly stated, the facts and matters stated in this witness statement are within my own knowledge derived from my involvement in the Arbitration and I believe such facts and matters to be true. Where I make a statement based upon information or belief, I will clearly indicate that that is the case and state the source of that information or belief.
- 1.7 The facts are matters within my knowledge, gained from documents shown to me and factual narration given to me by Ogun State Government, Nigeria (the “**OSG**”) and the Zone management (as defined below).
- 1.8 For the purpose of providing my evidence, I have referred to, or been referred to, a number of documents dated between 27 August 2001 and 26 March 2021 in order to refresh my memory. A list of these is set out in Appendix 1.

## **2. FACTUAL BACKGROUND TO THE ARBITRATION**

- 2.1 I refer to the Arbitration Claim Form for this application, which sets out in detail the relief sought by FRN and the grounds for the application.
- 2.2 In brief summary, the Arbitration arose out of two successive joint venture agreements. The first, between Guangdong Xinguang International China-Africa Investment Limited (“**CAI**”), CCNC Group Ltd (“**CCNC**”) and the Ogun State Government, Nigeria (“**OSG**”) entered into in June 2007 (the “**2007 JVA**”) [**CM1/pages 779-821**]. The second, between OSG, Zhongfu International Investment (NIG.) FZE (“**Zhongfu**”) and Zenith Global Merchant Limited (“**Zenith**”), a company incorporated in Nigeria and introduced into the JVA by the OSG, was entered into on 28 September 2013 (the “**2013 JVA**”) [**CM1/pages 990-1037**]. A diagram that, to the best of my knowledge, shows the parties involved in both the 2007 JVA and the 2013 JVA is exhibited at [**CM1/page 1144**].
- 2.3 The 2007 JVA related to the development, management, and operation of a 10,000 hectare (100 km<sup>2</sup>) free trade zone, known as the Ogun-Guangdong Free Trade Zone near Lagos, Nigeria (the “**Zone**”). Whilst the Zone was conceived to be on a land area of 10,000 hectares, the land was acquired in phases and at present holds 2,000 hectares. Development of the Zone was to be carried

- out by the Ogun Guangdong Free Trade Zone Company (“**OGFTZ**”), which was jointly owned by CAI, CCNC and the OSG as the 2007 JVA members.
- 2.4 Zhuhai Zhongfu Industrial Group Co. Ltd (“**Zhuhai**”) (the parent company of Zhongshan) and OGFTZ entered into the Fucheng Park Agreement (the “**Fucheng Park Agreement**”), referred to in the Award as the (“**2010 Framework Agreement**”) [CM1/pages 822-832]. The Fucheng Park Agreement concerned the development and management of an industrial park of 224 hectares within the Zone (the “**Park**”). Under the Fucheng Park Agreement Zhuhai would effectively take over management of the development of the Park.
  - 2.5 By a letter dated 28 November 2011 [CM1/pages 862-863], the OSG complained to CAI about alleged violations of the 2007 JVA, stating that CAI was officially bankrupt, and a top executive of CAI was alleged to be involved in criminal activity.
  - 2.6 On 15 March 2012, the OSG gave notice to terminate the 2007 JVA relying on various grounds including that CAI was bankrupt, as well as other allegations such as illegality, fraudulent practices, failing to provide a business plan, a master plan, or a phased design plan, and an alleged failure to contribute to the share capital of OGFTZ [CM1/pages 864-866].
  - 2.7 Also in March 2012 Zhongfu were appointed as interim manager of the Zone for an initial period of 3 months (see copy of appointment letter at CM1/pages 868-869).
  - 2.8 On 29 March 2012, Zhuhai and Guangdong Xinguang International Group Co Ltd (“**GXI**”), the parent company of CAI, entered into an Entrustment of Equity Management Agreement which stated that Zhuhai was to enjoy certain rights in relation to GXI’S 51% share in CAI (“**Entrustment of Equity Management Agreement**”) [CM1/pages 874-885]. On 10 June 2012 GXI and Zhuhai entered the “Supplemental Agreement to the Entrustment of Equity Management Agreement” (the “**Supplemental Agreement**”) [CM1/pages 889-894].
  - 2.9 On 2 July 2013, GXI sold its 51% participation in CAI to the New South Group (“**NSG**”), a Chinese company. The transaction was confirmed by the Guangzhou Notary Public Office [CM1/pages 985-989].
  - 2.10 On 28 September 2013, the OSG, Zhongfu and Zenith entered into the 2013 JVA which related to the development and management of the Zone.
  - 2.11 Correspondence was sent by Zenith to the OSG stating that NSG was holding itself out as the manager of the Zone and requesting that the OSG intervene and write to occupiers in the Zone making clear that Zhongfu was the only Chinese investor authorised to be in charge of the management of the Zone [CM1/pages 1044-1047]. Accordingly, on 28 April 2014, the OSG wrote to Zhongfu stating that no portion of the Zone had been sold to CAI and that the OSG had no dealings with NSG [CM1/page 1048].
  - 2.12 On 11 March 2016, the Economic and Commercial Section of the Consulate of the PRC in Lagos sent Diplomatic Note 1601 (“**Note 1601**”) to the OSG stating that it had been “officially notified” by a PRC authority “about the replacement of shareholdings owner of [CAI] to Guangdong New South Group”, which Note 1601 said, “will legally lead to the replacement of the management rights of the OGFTZ which is now in the hands of [Zhongfu] to Guangdong New South Group” [CM1/page 1117].
  - 2.13 On 12 April 2016 the OSG wrote to Zhongfu to discuss Note 1601 and the issues raised in it. [CM1/pages 1118-1119]. On 26 May 2016 the OSG were told that Dr Jianxin (Jason) Han (“**Dr Han**”), Managing Director and majority shareholder of Zhongshan and CEO of Zhongfu, was not in Nigeria ([CM1/page 1120]).

- 2.14 On 27 May 2016 the OSG wrote to Zhongfu stating that Zhongfu was alleged to have fraudulently converted assets of the Guangdong Province, misled the OSG and that the OSG required Zhongfu to hand over OGFTZ assets in its possession to NSG and to vacate the Zone within 30 days [CM1/pages 1121-1122].
- 2.15 On 22 July 2016 warrants were issued for the arrest of Dr Han and Mr Zhao, the Chief Finance Officer of OGFTZ from April 2012 until June 2016, for criminal breach of trust [CM1/pages 1123-1124].

### 3. PROCEDURAL HISTORY OF THE ARBITRATION

On 18 August 2016, shortly after the handover of the Zone, Zhongfu started Nigerian court proceedings against the OSG, Zenith and Nigerian Export Processing Zones Authority. On 9 September 2016, Zhongfu started separate proceedings in the Nigerian court against OGFTZ and the OSG, seeking possession of the Zone, an injunction and damages in excess of USD 1 billion plus interest. These proceedings are considered in more depth below at Section (5).

- 3.1 Zhongfu also initiated SIAC arbitration proceedings against the OSG and Zenith under the 2013 JVA. Zenith successfully applied to the Ogun State High Court for an anti-arbitration injunction. Zhongfu's appeal against the granting of the injunction was discontinued in 2018, as were the Court proceedings.
- 3.2 In August 2018, Zhongshan, the parent company of Zhongfu, served a Request for Arbitration pursuant to the BIT. Zhongshan nominated Matthew Gearing QC as arbitrator. FRN nominated Mr Oguneso SAN. The nominated arbitrators appointed Lord Neuberger of Abbotsbury as President of the arbitral tribunal (together the "**Tribunal**").
- 3.3 The Arbitration was commenced on the basis that, in light of the above factual background, FRN was allegedly in breach of certain provisions of the BIT. Specifically, Zhongshan, in its Request for Arbitration, claimed that FRN had breached the following provisions of the BIT:
- 3.3.1 Article 3(1) which requires "*Investments of investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party*";
- 3.3.2 Article 2(3) which requires FRN to not "*take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by investors of the Other Contracting Party*";
- 3.3.3 Article 2(2) which provides that "*investments of the investors of either Contracting Party shall enjoy the continuous protection in the territory of the other Contracting Party*"; and
- 3.3.4 Article 4 which prohibits the expropriation of investments of investors of the other Contracting Party unless certain specified conditions are met.
- 3.4 On 19 February 2019 the Tribunal ruled that the seat of the arbitration was "*London, United Kingdom*" (see copy of Procedural Order No 1 at [CM1/pages 693-701]). On 14 November 2019, the Tribunal ruled that the governing law was "*the law of Nigeria as supplemented by international law as provided by article 9.7 of the Treaty*" (see paragraph 61 of the Award at [CM1/pages 703-769]).
- 3.5 The hearing of the Arbitration took place online on 9 – 13 November 2019. The Award was made on 26 March 2021 [CM1/pages 703-769].

#### 4. GROUNDS FOR CHALLENGE

##### 4.1 Section 67

- 4.1.1 Section 67(1) of the Act provides that “*a party to arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.*”
- 4.1.2 On 23 April 2021 CMS wrote to Withers LLP (“**Withers**”) (solicitors for Zhongshan in the Arbitration) putting them on notice of FRN’s intention to challenge the Award pursuant to section 67(1) [**CM1/page 1154**]). Copies of the Arbitration Claim Form and witness evidence in support will be sent to Mr Rotimi Oguneso SAN, Mr Matthew Gearing QC and Lord Neuberger of Abbotsbury as the Tribunal putting them on notice of the application.

#### 5. SECTION 67 CHALLENGE

##### 5.1 Introduction

- 5.1.1 It is FRN’s position that the Tribunal lacked substantive jurisdiction because there was no valid arbitration agreement. Alternatively, the alleged dispute was outside the scope of any arbitration agreement.
- 5.1.2 The Tribunal, at paragraph 121 of its Award, ruled that it had jurisdiction (on the basis that it rejected FRN’s jurisdictional challenge). This Application is brought in accordance with section 30(2) of the Act, namely that any ruling on jurisdiction by a Tribunal may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this part.
- 5.1.3 Whilst a number of grounds of jurisdictional challenge were put before the Tribunal<sup>1</sup> by FRN, the focus of this Application is (1) whether there was a qualifying investment in Nigeria and (2) whether, by reason of the fork in the road provision in Article 9(3) of the BIT, the arbitration provision in Article 9(3) “*did not apply*”.
- 5.1.4 FRN’s grounds of challenge are set out in detail in the Grounds attached to the Claim Form. They are matters of legal argument and will be developed further in FRN’s skeleton argument as appropriate. However, I set out below relevant facts and evidence.
- 5.1.5 Article 9.7 of the BIT contains the following applicable law provision: “*The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepting by both Contracting Parties*” (see copy of the BIT at [**CM1/pages 770-778**]).
- 5.1.6 By way of Ruling made by the Tribunal dated 15 November 2019, it was held by the Tribunal that Nigerian law applies to the question of ascertaining the existence of an investment eligible for protection under the BIT: “[*t*]he governing law is the law of Nigeria supplemented by international law, as provided by Article 9.7 of the Treaty, and in particular that the governing law is: a. Nigerian law, at least in so far it relates to the acquisition and rights pertaining to the investment and the legal framework in which

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<sup>1</sup> See paragraph 2 of the Amended Statement of Defence, the Claimant’s Jurisdictional Objection dated 14 October 2019, the Claimant’s Further Jurisdictional Arguments dated 13 May 2020 and the Claimant’s Further Rejoinder dated 2 September 2020.

*the investment was made and operated. [...]*” (see paragraph 2.6 of FRN’s Further Jurisdictional Arguments at [CM1/pages 327-356]).<sup>2</sup>

5.1.7 I draw attention to the following provisions of the BIT:

- (a) The Preamble which states “*recognizing investor’s duty to respect the host country’s sovereignty and laws.*”
- (b) Article 1(1) of the BIT which states “*investment*” means “*every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter,....*”
- (c) Article 2(1) of the BIT which states “*Each Contracting Party shall promote economic cooperation and encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.*”

## 5.2 Investment

5.2.1 In the Arbitration, FRN objected to the Tribunal’s jurisdiction on the basis that Zhongshan has failed to establish that it has made a qualifying investment in Nigeria.

### *Introduction*

5.2.2 Article 1(1) of the BIT states that “*The term “investment” means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the Contracting Party in the territory of the latter...* ” [CM1/pages 770-778]]. It is FRN’s position that an investment within the meaning of the BIT must involve certain objective characteristics, namely: (a) contribution; (b) operational risk; and (c) duration. Furthermore, the contribution must be sufficient and not notional. These points will be developed in legal submissions.

5.2.3 In its Statement of Claim, Zhongshan alleged the following investments:

- (a) “*the contractual rights and obligations acquired pursuant to the Fucheng Industrial Park Agreement*”<sup>3</sup> (the “**Fucheng Park Investment**”) which, in Zhongshan’s view, fall within the definition of “investment” in Article 1.1(c) and (e) of the BIT; and
- (b) “*the Claimant’s direct shareholding in Zhongfu Nigeria*” and “*the rights and obligations Zhongfu Nigeria obtained under the JVA, including shareholding rights in OGFTZ Company*”<sup>4</sup> (the “**JVA Investments**”), which in Zhongshan’s view fall within the definition of “investment” in Article 1.1.(a)(b) and (c) of the BIT.

5.2.4 FRN’s position is that (1) the burden is on Zhongshan to prove the objective characteristics of “investment” as identified above; and (2) the elements of contribution and operational risk are not made out on the evidence.

### *Contribution*

5.2.5 Zhongshan set out its case on contribution in paragraph 91 of its skeleton argument dated 5 November 2000 (the “**Zhongshan Skeleton**”).

<sup>2</sup> CMS note – we do not have a copy of this Ruling to exhibit at present – to request from CM

<sup>3</sup> Statement of Claim, para. 164(a).

<sup>4</sup> *Ibid.*, para. 164(b).

- 5.2.6 Firstly, it alleged that it had made contributions by “*attracting and facilitating millions of dollars in investment in Nigeria through the conclusion of multiple lease agreements and investment agreements with tenants in the Zone.*”<sup>5</sup> [CM1/pages 372-406] However, these matters were not evidenced properly. FRN will also say that any evidence of a contractual right (if any) to rental income does not amount to an actual commitment of own resources to an “investment”.
- 5.2.7 Secondly, Zhongshan alleges that it had made contributions in the form of “*the construction of a perimeter fence around the Fucheng Park*”<sup>6</sup> [CM1/pages 372-406]. However, Zhongshan has not provided any documents to prove the alleged contribution or to explain its precise nature. Further, at paragraph 65 of the witness statement of Dr Han [CM1/pages 34-65], Dr Han states that Zhongfu allocated capital for the perimeter fence.
- 5.2.8 Thirdly, Zhongshan alleges “*financial contributions to the OGFTZ Company to construct various buildings and roads in the Zone, excavate land and construct a square, and pay for other expenses*”<sup>7</sup> [CM1/pages 372-406]. However, Zhongshan has not provided proper documentary evidence to prove the alleged contributions. The document which Zhongshan cites (“C-205” of Zhongshan Skeleton, footnote 127 [CM1/pages 858-859]) is insufficient for these purposes. Insofar as there are contemporaneous invoices, these suggest that purchases were paid for by Zhongfu or OGFTZ<sup>8</sup>.

The Tribunal, in its Award finds “*that the audited accounts of Zhongfu and OGFTZ for the calendar year 2015 (“the 2015 Accounts) record expenditure (in rounded figures), respectively, of NGN 54m on “road construction” and NGN 297m on infrastructure expenditure (and to put that in context, in 2015 the exchange rate was around 200 NGN per USD)*”. However the relevant accounts (see Exhibit C-082 [CM1/pages 1087-1116] and Exhibit C-121 in the Arbitration [CM1/pages 1061-1085]) do not on their face show any contribution being made by Zhongshan. Instead they refer only to road construction expenses, which appear to be attributed to Zhongfu. It should also be noted that the audited accounts were issued in September 2016, after Zhongshan had left the site and there is no evidence that they were ever submitted to the Board of OGFTZ. There is no evidence that, under the management of Zhongfu, OGFTZ prepared and filed annual financial statements.

- 5.2.9 Fourthly, Zhongshan alleges “*the provision of raw materials, machinery and construction specialists from China*”<sup>9</sup> [CM1/pages 372-406]. However, it has not provided any documentary evidence to support any of this.
- 5.2.10 Fifthly, Zhongshan alleges “*the purchase of vehicles and equipment (including cement mixers, payloaders, a crane, road rollers, bulldozers and tipper trucks) for the Zone, the construction of roads, drainage and warehouses*”<sup>10</sup> [CM1/pages 372-406]. Again, Zhongshan has not provided sufficient documentary evidence to support any of this.

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<sup>5</sup> Zhongshan Skeleton, para. 91(a).

<sup>6</sup> Zhongshan Skeleton, para. 91(b).

<sup>7</sup> Zhongshan Skeleton, para. 91(c).

<sup>8</sup> WS J Han fn25 – 26 [CM1/pages 34-65]

<sup>9</sup> Zhongshan Skeleton, para. 91(c).

<sup>10</sup> Zhongshan Skeleton, para. 91(c).

Insofar as there are contemporaneous invoices, these indicate that payments were made by Zhongfu and OGFTZ, not Zhongshan.<sup>11</sup>

5.2.11 Sixthly, Zhongshan alleged “RMB 10 million via Zhongfu Nigeria to the OGFTZ Company as part of the Claimant’s acquisition of its 60% shareholding in the OGFTZ Company”<sup>12</sup> [CM1/pages 372-406]. In support Zhongshan cited two documents in the Arbitration, Exhibit C-036 and Exhibit C-037 (see [CM1/pages 854-855] and [CM1/pages 983-984]). However:

- (a) Clause 2.2 of the 2013 JVA provides that “[t]he contribution of each party may be made either in cash or investment in the infrastructure of the Zone, value of which is to be determined by an independent valuer to be jointly appointed by the Parties.” [CM1/pages 990-1037].
- (b) Clause 2.10 provides that “[t]he contribution of [Zhongfu Nigeria] in kind to the equity of OGFTZ shall, at all time be carefully enumerated, verified, valued and audited in accordance with international standards.” [CM1/pages 990-1037].
- (c) Clause 2.12 adds that “should OGFTZ require additional finance by way of equity or debt, its Board of Directors shall be responsible for approving such a transaction and ratifications by shareholders obtained at the next General Meeting.” [CM1/pages 990-1037].
- (d) Zhongshan had not provided any documentary evidence to show that there was any valuation or any approval by the Board of Directors of OGFTZ, as required by the terms of the 2013 JVA.
- (e) Furthermore, there was no evidence of any share certificate establishing the equity allegedly owned, no evidence as to the payment price of the equity, nor as to the gross value of the equity owned (see Transcript Day 1/182/9-15) [CM1/pages 437-692].

5.2.12 Furthermore:

- (a) There was no contemporaneous evidence of any cash contribution or capital contribution into Nigeria.
- (b) As regards the Park, the evidence cited by Zhongshan included a receipt dated 25 July 2011 purporting to show the receipt by OGFTZ of cash 5,455,129.50 RMB for Land Use Rights Fees (Exhibit C-036 in the Arbitration [CM1/pages 854-855]). However, as stated above there was no evidence of capital importation from China.
- (c) Zhongshan also relied upon the Supplementary Agreement stating that RMB 4,544,870.5 was used to make up the deficiency on the land use right transfer fees that should be paid by Zhuhai, and that the balance of RMB 8,210,703.5 was to be treated as a loan lent to OGFTZ with interest at a rate of 25%. (Exhibit C-037 in the Arbitration [CM1/pages 983-984]). However, there was nothing before the Tribunal showing that the Board of OGFTZ had applied for a loan, nor that any such loan was ever valued or verified by an independent third party.

<sup>11</sup> WS J Han fn25-26 [CM1/pages 34-65]

<sup>12</sup> Zhongshan Skeleton, para. 91(f).



### ***Operational Risk***

- 5.2.13 FRN’s position is that Zhongshan did not have any operational risk in the management of the Zone, given the lack of eligible contribution. FRN will also rely on the fact that a year before the termination of its appointment the OSG pointed out that “*the Zone has consequently stagnated under your watch.*” (Exhibit R-07 in the Arbitration [CM1/pages 1059-1060]).

### ***The Arbitration***

- 5.2.14 In the Arbitration, FRN raised this jurisdictional objection in its Further Jurisdictional Arguments dated 13 May 2020 [CM1/pages 327-356]. The Tribunal gave permission for these arguments to be raised. The arguments were developed in paragraphs 2.4-2.6 of FRN’s Further Rejoinder ([CM1/pages 357-371]); and in paragraphs 4.19 – 4.22 of the Zhongshan Skeleton ([CM1/pages 372-406]).
- 5.2.15 The Tribunal rejected the arguments in broad terms in paragraph 79 of the Award. In doing so, it overlooked that the burden is on Zhongshan and also failed to have regard to the points made above.

## **5.3 Fork in the Road**

### ***Introduction***

- 5.3.1 Articles 9(2) and 9(3) of the BIT read as follows:

*2. If the dispute cannot be settled through negotiations within six months, the [sic] either Party to the dispute shall be entitled to submit the dispute to the competent court to [sic] the Contracting Party accepting the investment.*

*3. If a dispute cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article it may be submitted at the request of either Party to an ad hoc arbitral tribunal. **The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article.*** (Emphasis added)

- 5.3.2 Article 9(3) of the BIT is a “fork-in-the-road” provision. It is FRN’s position that on the facts of this case the “investor concerned” had “resorted to the procedure specified” in paragraph 2 of Article 9, with the result that the arbitration provision in the first sentence of paragraph 2 of Article 9 “did not apply”. It follows that there was no valid arbitration agreement between FRN and Zhongshan. Nigeria will rely on the following facts and matters.

### ***Zhongshan/Zhongfu***

- 5.3.3 FRN will submit that, for the purposes of Article 9(2) and the second sentence of Article 9(3) of the BIT, Zhongshan acted through Zhongfu, its wholly owned Nigerian subsidiary (and/or those proceedings should be considered as having been brought by Zhongshan). FRN will rely amongst other matters on the following:

- (a) Under Nigerian law, foreign companies doing business in Nigeria were obliged to incorporate a local subsidiary (section 54 of the Companies and Allied Matters Act 2004 as then in force [CM1/pages 1155-1156]). FRN will seek permission to adduce expert evidence on this point (although the point was not disputed in the Arbitration, see Award at paragraph 85). It follows that Zhongshan necessarily had to act through Zhongfu.

- (b) Zhongfu was a wholly owned subsidiary of Zhongshan (see copy of Regulations stating that Zhongshan is the 100% shareholder [CM1/pages 834-850]). It may be presumed from this fact alone that Zhongshan controlled Zhongfu.
- (c) The 2010 Framework Agreement states at clause 2.2 that “*the actual operation and management organ of Fucheng Industrial Park shall be Party A’s wholly-owned subsidiary or a company under Party A’s control established in Nigeria with a registered office in Fucheng Industrial Park.*”
- (d) On 24 January 2011 Zhongfu was registered by NEPZA, a federal agency, as a Free Trade Zone Enterprise in the Zone (see paragraph 18 of the Request for Arbitration [CM1/pages 6-27]).
- (e) Zhongfu was appointed as interim manager in relation to the Zone in March 2012 (see March 2012 letter, [CM1/pages 868-869]) and it was Zhongfu that entered the 2013 JVA [CM1/pages 990-1037].
- (f) In all the circumstances, FRN will say that Zhongshan controlled Zhongfu and that Zhongfu was incorporated to enable Zhongshan to do business in Nigeria.

### ***The Nigerian Proceedings***

5.3.4 In 2016 Zhongfu brought proceedings in Nigeria as follows.

- (a) In August 2016, Zhongfu brought a claim in the Federal High Court of Abuja against NEPZA as First Defendant, the Attorney General of Ogun State as Second Defendant and Zenith as Third Defendant (“**the Federal Court Proceedings**”) (see Writ of Summons [CM1/pages 1125-1126]). By this action, Zhongfu sought declaratory relief to allow it to remain conducting business in the Zone, declaring that NEPZA acted unlawfully or wrongfully by colluding with Ogun State to threaten, harass, intimidate, forcibly evict and/or remove Zhongfu and its personnel from the Zone; and direct NEPZA and its representatives to recognise Zhongfu as the manager and operator of the Zone. Zhongfu further sought injunctive relief to restrain NEPZA and its representatives from giving effect to any communications from Ogun State and Zenith purportedly removing Zhongfu as the manager and operator of the Zone; restrain NEPZA and its representatives from recognising Zenith or anyone else as the manager or operator of the Zone; and restrain NEPZA and its representatives from intimidating, harassing or removing Zhongfu from the Zone.
- (b) In September 2016, Zhongfu initiated proceedings in the High Court of Ogun State seeking *inter alia* declaratory relief that it was entitled to possession of 224 hectares of land said to have been granted to Zhongfu under the Fucheng Park Agreement and also seeking substantial damages (“**the State Court Proceedings**”) (Statement of Claim [CM1/pages 1133-1138]). OGFTZ was the First Defendant, Ogun State the Second Defendant and the Attorney General of Ogun State the Third Defendant.
- (c) Zhongfu discontinued the Federal Court Proceedings on 27 April 2018 (see Notice of Discontinuance at [CM1/pages 1141-1142]). Zhongfu discontinued the State Court Proceedings on 27 March 2018 (see Notice of Discontinuance at [CM1/pages 1139-1140]).

- 5.3.5 FRN will submit (broadly) that the claims in the Nigerian Proceedings had the same “fundamental basis” and/or the same “normative source” as the Arbitration. FRN will refer in particular to: (1) the Arbitration as put in the Request for Arbitration dated 30 August 2018 ([CM1/pages 6-27]); the Statement of Claim dated 1 May 2019 ([CM1/pages 66-191]) and will also refer to the Award ([CM1/pages 703-769]); (2) the Federal Court Proceedings as put in the Writ of Summons ([CM1/pages 1125-1126]); and (3) the State Court Proceedings as put in the Statement of Claim ([CM1/pages 1127-1132]).
- 5.3.6 The analysis of the claims will be a matter for legal submissions. FRN will rely in particular on: (1) the factual background of the respective claims; (2) the rights and agreements alleged in those claims or alleged to have been deprived; (3) in the State Court Proceedings Zhongfu’s specific reliance on alleged transfer of rights from Zhongshan to itself; (4) the nature of the alleged wrongful acts in the respective claims; (5) the nature of alleged adverse impacts; (6) the alleged role of Note 1601; (7) the fact that in the State Court Proceedings Zhongfu advanced a substantial damages claim (of US\$1,000,797,000, Statement of Claim [CM1/pages 1133-1138]) and that this was of a similar amount and largely co-extensive with the damages claim advanced in the Arbitration (see paragraph 297 of the Statement of Claim in the Arbitration [CM1/pages 66-191]).
- 5.3.7 FRN will also rely on the fact that the Defendants to the Federal Court Proceedings included NEPZA and the Attorney General of Ogun State whilst the Defendants to the State Court Proceedings included Ogun State and the Attorney General of Ogun State.

***The Arbitration***

- 5.3.8 FRN advanced the fork in the road argument as a jurisdictional challenge from the outset. This argument is dealt with extensively in FRN’s Jurisdictional Objections dated 14 October 2019, paragraph 3.7 onwards [CM1/pages 192-243] and is also raised in the Defence dated 14 October 2019, paragraph 2 [CM1/pages 244-284]. FRN developed the arguments further in its Skeleton at paragraph 5.2 to 5.21 [CM1/pages 407-436].
- 5.3.9 The Tribunal’s consideration of the fork in the road arguments is found at paragraphs 82 to 91 of its Award [CM1/pages 703-769].
- 5.3.10 The Tribunal found for Zhongshan on the fork in the road argument, rejecting FRN’s position (see paragraph 89 of the Award). The Tribunal considered the fork in the road arguments based on two tests used in investment treaty arbitrations: the triple identity test (same object, same cause of action and same parties) and the fundamental basis test. The Tribunal considered that the “triple identity test” was the correct test (see paragraphs 83-84 of the Award), on which basis it rejected FRN’s arguments. However, the Tribunal then stated that it would have reached the same result if it had applied the “fundamental basis” test, which FRN had put forward as its primary position. FRN will submit in particular, that the Tribunal applied the wrong legal principles and/or failed to recognise that the Nigerian proceedings had been brought by “the investor concerned” within the meaning of the BIT and/or that the Nigerian proceedings and the Arbitration shared the same “normative source” or “fundamental basis.”

**6. ALL AVAILABLE METHODS OF CHALLENGE HAVE BEEN EXHAUSTED**

- 6.1 All additional methods of challenge, processes of appeal or review have been exhausted.
- 6.2 I do not consider that this is an appropriate case for a section 57 application under the Act. No correction or clarification is sought, nor is there a claim or counterclaim that has been overlooked

that could be dealt with in an additional award. This is a jurisdictional challenge to the Tribunal which goes beyond any application of a “slip rule”.

- 6.3 Article 37 of the UNCITRAL Rules 2013 allows a party to seek an interpretation of an award. Article 38 of said rules allows a party to seek a correction of an award. Article 39 allows a party to request an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal. Again, none of these articles is apt to cover a situation where the party seeks to challenge the jurisdiction of the tribunal (see paragraph 16 of the Consolidated Terms of Appointment under which it was agreed that the conduct of the Arbitration shall be governed by the UNCITRAL Rules [**CM1/pages 28-33**]).
- 6.4 Thus, there is no further means of appeal, review, or other method of challenge or recourse. FRN must have recourse to a section 67 application under the Act.

**7. REMEDY SOUGHT ON THE SECTION 67 CHALLENGE**

- 7.1 FRN seeks an order under section 67(1)(b) of the Act declaring that the Award on the merits is of no effect in whole (or in such part as the Court thinks fit) because the tribunal did not have substantive jurisdiction, alternatively an order under section 67(3) setting aside or varying the Award of the Tribunal as to its substantive jurisdiction in such terms as the Court thinks fit.

**8. ADDITIONAL MATTER FOR THE COURT’S ATTENTION**

- 8.1 I draw to the Court’s attention another matter. Without any waiver of legal privilege whatsoever, I advise that since my involvement as advocate for FRN in the Arbitration and the Tribunal rendering its Award, a number of documents relevant to the factual matters in dispute in the Arbitration have been brought to my and FRN’s attention (the “**New Documents**”). I am concerned that the New Documents may look inconsistent with the evidence submitted by the parties in the Arbitration and the position advanced by FRN in respect of the concealment of the Entrustment of Equity Management Agreement. In circumstances where the Award is being challenged by FRN and the Court is being asked to review the Award, I understand that it is necessary to bring the New Documents to the attention of the Court so to avoid any suggestion that the Court is being misled.
- 8.2 Further, I understand that it may assist the Court to submit factual witness evidence in respect of the authenticity of these New Documents. In the limited time available to prepare this application it has not been possible to determine the authenticity of the New Documents and, in particular, the 18 June 2012 Letter as defined below. In the circumstances, in order to avoid any suggestion of misleading the Court, I set out below details of the New Documents, how each of these New Documents has come into the possession of FRN and when I first became aware of each of the New Documents.
- 8.3 **Memorandum**
- 8.3.1 I was provided on 15 April 2021 with a copy of the Memorandum prepared by Mr Ziao-Lin Wei (“**Mr Wei**”), a director of NSG (the “**Memorandum**”) [**CM1/pages 1145-1153**]. For the avoidance of doubt, I had not seen or been informed of the content of the Memorandum prior to being provided with a copy on 15 April 2021.
- 8.3.2 The Memorandum sets out the history of the shareholding in OGFTZ company from the perspective of NSG.
- 8.3.3 Upon reviewing the Memorandum I noted it referred to a number of documents which I had not previously seen during the Arbitration, including at paragraph 4 a reference to a letter from the OSG to Zhongfu and GXI dated 18 June 2012 in which the OSG is said

to have “expressed that it had no objection to the Entrustment Agreement” (the “**18 June 2012 Letter**”).

8.3.4 Between 17 April 2021 and 19 April 2021 I was provided by Mr Wei with copies of the documents referred to in that Memorandum including the 18 June 2012 Letter (the “**Memorandum Documents**”). I set out below details of the Memorandum Documents provided by Mr Wei.

#### 8.4 **18 June 2012 Letter**

8.4.1 I was provided on 18 April 2021 with a copy of the 18 June 2012 letter by NSG via CMS [CM1/pages 899-902]. I had not seen or been informed of the content of the 18 June 2012 Letter prior to being provided with a copy on 18 April 2021.

8.4.2 The 18 June 2012 Letter was not disclosed by FRN during the course of the Arbitration proceedings because it had not been provided by NSG until 18 April 2021. Zhongshan also did not refer to this letter in the Arbitration.

8.4.3 On the face of it the 18 June 2012 Letter appears to have been sent by Mr Adeoluwa in his role as Secretary to the Government of Ogun State to Zhongfu and CAI. I have put this letter before Barrister Adeoluwa, as it was not referred to in his evidence before the Tribunal. However, I have not been able to obtain confirmation that the 18 June 2012 Letter is genuine. On 19 April 2021 I received feedback on my query from the Office of the Attorney General, Ogun State, confirming that they have no trace of the 18 June 2012 Letter and therefore are unable to authenticate it.

#### 8.5 **Handover documents**

8.5.1 I was provided between 17 and 19 April 2021 by NSG, via CMS, with a number of documents which appear to relate to the handover of OGFTZ from CAI to Zhongfu (the “**Handover Documents**”). The Handover Documents form part of the Memorandum Documents. For the avoidance of doubt, I had not seen or been informed of the content of the Handover Documents prior to being provided with a copy on 17 April 2021.

8.5.2 The Handover Documents were not disclosed during the Arbitration proceedings by FRN. Zhongshan also did not refer to the Handover Documents in the Arbitration.

8.5.3 I set out below a list of the Handover Documents:

- (a) A PDF of documents stated to demonstrate the handing over of records [CM1/pages 939-961];
- (b) Two pages extracted from that PDF of documents demonstrating the handing over of records identifying the signature of Dr Han [CM1/pages 962-963];
- (c) A PDF document said to demonstrate the handing over of bank account details and arranging to change the signatories on various bank accounts [CM1/pages 947-959];
- (d) A PDF letter dated 6 September 2012 confirming the start of the entrustment of assets under the Equity Entrustment Agreement [CM1/page 1201];
- (e) A certificate of Authorisation to sign the Equity Entrustment Agreement dated 9 April 2012 [CM1/page 926]; and
- (f) A handover list of licences and documents of OGFTZ dated 19 July 2012 [CM1/pages 1175-1200]

#### 8.6 **The 13 and 14 June 2012 letters**

- 8.6.1 As set out above, upon receiving the 18 June 2012 Letter, I sent a copy to Mr Adeoluwa (on the basis that the letter purported to have been sent by him). Mr Adeoluwa sent me on 20 April 2021 two further letters which had not been disclosed in the Arbitration and which I had not previously seen or been informed of their content. I set out below details of these letters.

*Letter dated 13 June 2012 sent by OSG to OGFTZ (the “13 June 2012 Letter”)*

- 8.6.2 I was provided on 20 April 2021 with a copy of the 13 June 2012 Letter by Mr Adeoluwa, the Secretary to the Government of Ogun State between 2011 and 29 May 2019 ([**CM1/pages 895-896**]). For the avoidance of doubt, I had not seen or been informed of the content of the 13 June 2012 Letter prior to being provided with a copy on 20 April 2021.
- 8.6.3 The 13 June 2012 Letter is about a proposed meeting between the Governor of Ogun State and a delegation of Senior Government Officials from Guangdong Province which was due to be held (and did in fact take place) on 14 June 2012 and sets out a proposed agenda for that meeting.
- 8.6.4 The 13 June 2012 Letter was not disclosed during the course of the Arbitration proceedings by FRN. I am unaware why the 13 June 2012 Letter was not disclosed in the Arbitration. Zhongshan also did not refer to this letter in the Arbitration.
- 8.6.5 I note that the 13 June 2012 Letter states that the OSG was in receipt of Zhongfu’s letter dated 6 June 2012. I have not seen and do not have a copy of that letter. I have requested a copy of the letter from Mr Adeoluwa but he has told me he is unable to provide a copy due to no longer being employed by the OSG and accordingly does not have further access to the official records of the OSG. For the avoidance of doubt that 6 June 2012 letter was also not disclosed during the Arbitration.

*Letter dated 14 June 2012 sent to the OSG by Zhongfu (the “14 June 2012 Letter”)*

- 8.6.6 I was provided on 20 April 2021 with a copy of the 14 June 2012 Letter by Mr Adeoluwa [**CM1/pages 897-898**]. I had not seen or been informed of the content of the 13 June 2012 Letter prior to being provided with a copy on 20 April 2021.
- 8.6.7 The 14 June 2012 Letter was not disclosed during the course of the Arbitration proceedings. I am unaware why the 14 June 2012 Letter was not disclosed in the Arbitration. Zhongshan also did not refer to this letter in the Arbitration.

## **8.7 Other documents**

- 8.7.1 On 21 April 2021 I was sent by Mr Wei a certified statement of Notary Public of the Events which occurred in the OGFTZ on Tuesday 8 April 2014 (the “**Notary Public Statement**”) [**CM1/pages 1042-1043**].
- 8.7.2 For the avoidance of doubt, I had not seen or been informed of the content of the Notary Public Statement prior to being provided with a copy on 21 April 2021.
- 8.7.3 The Notary Public Statement was not disclosed during the Arbitration proceedings by FRN. Zhongshan also did not refer to the Notary Public Statement in the Arbitration.
- 8.7.4 On 21 April 2021 I was sent by NSG, via CMS, a number of further background documents (the “**Additional Background Documents**”) including:
- (a) A letter from CAI to Mr Adeoluwa as Secretary to the State Government rejecting the termination of CAI’s participation in the OGFTZ [**CM1/pages 886-888**];

- (b) An implementation report on the disposal plan of Nigeria Ogun Guangdong Free Trade Zone [CM1/pages 905-938];
  - (c) The handover record of the company seal of GXI [CM1/pages 960-961];
  - (d) A letter dated 4 April 2014 to Mr Gbenga Kuye the Managing Director of NEPZA from GXI regarding the Termination of the Entrustment of Equity Management Agreement [CM1/pages 1038-1039]; and
  - (e) A letter dated 4 April 2014 to Mr Adeoluwa in his capacity of Secretary to the State Government of Ogun State regarding the Termination of the Entrustment of Equity Management Agreement ([CM1/pages 1040-1041]).
- 8.7.5 For the avoidance of doubt, I had not seen or been informed of the content of the Additional Background Documents prior to being provided with a copy on 21 April 2021.
- 8.7.6 The Additional Background Documents were not disclosed during the Arbitration proceedings by FRN. Zhongshan also did not refer Additional Background Documents in the Arbitration.
- 8.7.7 On 22 April 2012 I was sent by Deng Yu, Vice President of NSG<sup>13</sup> a further copy of the 18 June 2012 Letter (the “**Yu Copy**”) ([CM1/pages 903-904]) and a copy of a letter dated 4 June 2012 stated to be to Mr Adeoluwa from CAI and Zhongfu regarding the cooperation on OGFTZ (the “**4 June 2012 Letter**”) ([CM1/pages 1040-1041]). I understand from Mr Yu that these documents were apparently located in the archive room of GXI. I note that the second page of the 18 June 2012 Letter and the Yu Copy are not identical.
- 8.7.8 For the avoidance of doubt, I had not seen or been informed of the content of the 4 June 2012 Letter prior to being provided with a copy on 22 April 2021. As set out above, I had not seen or been informed of the content of the 12 June 2012 Letter prior to 15 April 2021. I equally had not seen or been informed of the content of the Yu Copy.
- 8.7.9 The 4 June 2012 Letter and the Yu Copy were not disclosed during the Arbitration by FRN. Zhongshan also did not refer to the 4 June 2012 Letter and the Yu Copy in the Arbitration.
- 8.7.10 On 22 April 2021 I was sent by Deng Yuan an image of a message from Daniel Che to the email address [bcguest.00445@sheraton](mailto:bcguest.00445@sheraton) requesting that a document titled “Letter to Ogun Gov.pdf” and document titled “Memorandum OGFTZ.pdf” be printed (the “**Print Request**”) [CM1/page 1043]. It is suggested by Mr Yu that those documents were printed and passed to me in hardcopy on 5 August 2019 at the Sheraton Hotel, Lagos.
- 8.7.11 For the avoidance of doubt, I had not seen the Print Request prior to the 22 April 2021 email from Mr Yu. Further, I have no recollection of any documents being provided to me in hardcopy on 5 August 2019 at the Sheraton Hotel, Lagos.
- 8.7.12 The Print Request was not disclosed during the Arbitration proceedings by FRN and Zhongshan also did not refer to the Print Request in the Arbitration.

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<sup>13</sup> Mr Yu is stated to be the Vice President of NSG in the following article: <https://thecitizenng.com/l-r-vice-president-of-guangdong-new-south-group-limited-deng-yu-managing-director-shell-nigeria-gas-ed-ubong-governor-of-ogun-state-dapo-abiodun-and-minister-of-industry-trade-and/>

**9. SERVICE OUT**

- 9.1 As set out above, Zhongshan is based in the PRC and its address, as provided by Zhongshan in its Request for Arbitration dated 30 August 2018, is: Room 05, Floor 15, Tower 5, Shangfeng Financial Business Center. No. 88 Zhongshan 4th Road, East District, Zhongshan City, China.
- 9.2 For the purposes of service of this application on Zhongshan, CMS wrote to Withers, on 23 April 2021 to request confirmation that Withers was instructed to accept service of this application on behalf of Zhongshan (a copy of that letter is at [CM1/page 1154]). FRN sought such confirmation from Zhongshan in the hope of avoiding the cost and delay associated with service out of the jurisdiction.
- 9.3 Withers responded by email on the same date to confirm they are authorised to accept service on behalf of Zhongshan ([CM1/page 1772]).

**10. STATEMENT OF TRUTH**

- 10.1 I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**CONFIRMATION OF COMPLIANCE**

- 10.2 I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.
- 10.3 I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.
- 10.4 This witness statement sets out only my personal knowledge and recollection, in my own words.
- 10.5 On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.
- 10.6 I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.

**Signed:**



**Full name:** Chikwendu Madumere

**Position:** Partner, Madumere & Madumere

**Dated:** 23 April 2021

**11. CERTIFICATE OF COMPLIANCE**

I hereby certify that:

- 11.1 I am the relevant legal representative within the meaning of Practice Direction 57AC.
- 11.2 I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Chikwendu Madumere.



- 11.3 I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

**Signed:**

A handwritten signature in blue ink, appearing to read 'D Bridge'.

**Full name:** David Bridge

**Position:** Partner, CMS

**Dated:** 23 April 2021

## APPENDIX 1

## LIST OF DOCUMENTS TO WHICH I HAVE REFERRED OR BEEN REFERRED

NO	DOCUMENT DESCRIPTION	Date
<b>Key Documents</b>		
1.	ZFII v FRN - JVA structure	N/A
2.	Agreement between the Government of the Peoples Republic of China and the Government of the Federal Republic of Nigeria for the Reciprocal Promotion and Protection of Investments (the “ <b>BIT</b> ”)	27/08/2001
3.	Joint Venture Agreement amongst (1) Ogun State Government (2) Guangdong Xinguang International China-Africa Investment Ltd (CAI) (3) CCNC Group Limited for the Development, Management and Operation of Ogun Guangdon Free Trade Zone (the “ <b>2007 JVA</b> ”)	28/06/2007
4.	Framework Agreement on the Establishment of Fucheng Industrial Park in Ogun Guangdon Free Trade Zone (“ <b>Fucheng Park Agreement</b> ”)	29/06/2010
5.	Zhongfu International Investment (NIG) FZE, “Regulations”	10/10/2010
6.	Zhongfu International Investment (NIG) FZE, "The Enterprise Overseas Investment Certificate", Registration No. 201005944 (with translation)	13/10/2010
7.	List of Moneys Borrowed by the Free Trade Zone Company	25/07/2011
8.	Zhongfu International Investment (NIG) FZE, "Overseas Enterprise Investment Certificate", Registration No. 4400201100286 (with translation)	06/09/2011
9.	Letter from Ogun State Government to China Africa Investment Co. Limited	28/11/2011
10.	Appointment of Zhongfu International Investment Nigeria as Interim Manager/Administrator of Ogun Guangdon Free Trade Zone	15/03/2012
11.	Notice of termination of China-Africa Investment Limited’s participation in Ogun Guangdong Free Trade Zone (2007 JVA)	15/03/2012
12.	Entrustment of Equity Management Agreement between Guangdong Xinguang International Group Co., Ltd and Zhuhai Zhongfu Industrial Group Co., Ltd	29/03/2012
13.	Letter from CAI and Zhongfu to Mr Adeoluwa	04/06/2012
14.	Supplemental Agreement to Entrustment of Equity Management Agreement between Guangdong Xinguang International Group Co., Ltd and Zhuhai Zhongfu Industrial Group Co., Ltd	10/06/2012
15.	Letter from the Ogun State Government to Zhongfu International Investment Nigeria, Reference: C.491/271 (Page 1)	13/06/2012
16.	Letter from the Ogun State Government to Zhongfu International Investment Nigeria, Reference: C.491/271 (Page 2)	13/06/2012

17.	Letter from Zhongfu International Investment Nigeria to Ogun Stat Government (Page 1)	14/06/2012
18.	Letter from Zhongfu International Investment Nigeria to Ogun Stat Government (Page 2)	14/06/2012
19.	Letter from the Secretary of the Statement Government to Zhongfu International	18/06/2012
20.	Letter from the Secretary of the Statement Government to Zhongfu International ( <b>Yu Copy</b> )	18/06/2012
21.	Southern United Assets & Equity Exchange Certificate for Property Rights Transaction relating to the GXIG NSG transfer	09/07/2013
22.	Joint Venture Agreement amongst (1) Ogun State Government (2) Zhongfu International Investment (NIG) FZE (3) Zenith Global Merchant Limited for the Development, Management and Operation of Ogun Guangdong Free Trade Zone (“ <b>2013 JVA</b> ”)	28/09/2013
23.	Letter from Guangdong Xinguang International to NEPZA	04/04/2014
24.	Letter from Guangdong Xinguang International to Secretary to the State	04/04/2014
25.	Certified Statement of Notary Public of the Events which occurred at the Ogun State- Guangdong Free Trade Zone on 8 April 2014	10/04/2014
26.	Letter from the Ogun State Government to Zhongfu International Investment Nigeria	28/04/2014
27.	Cash Credit Invoices and Receipts from Bertola Machine Tool Ltd. to Ogun-Guangdong Free Trade Zone	20/01/2015 and 26/01/2015
28.	Invoice and Delivery Note from Fouani Nigeria Ltd. to Zhongfu International Investment (NIG) FZE	26/01/2015
29.	Invoice and Delivery Note from Fouani Nigeria Ltd. to Zhongfu International Investment (NIG) FZE	27/01/2015 and 30/01/2015
30.	Invoice from Unicontinental International to Zhongfu International Investment (NIG) FZE (with translation)	23-24/04/2015
31.	Invoices from CNC Engineering Co., Ltd. to Zhongfu International Investment (NIG) FZE	03/02/2015 – 03/06/2015
32.	Invoices from Sinotrust International Investment Ltd. to Zhongfu International Investment (NIG) FZE	14/02/2015 – 29/07/2015
33.	Letter from the Ogun State Government to Zhongfu International Investment Nigeria	18/05/2015
34.	Ogun Guangdong Free Trade Zone Company (OGFTZ) Auditors’ Report on Special Purpose	31/12/2015
35.	Zhonghfu International Investment (NIG) FZE Auditors’ Report and Financial Statements	31/12/2015
36.	Note 1601 from the Peoples Republic of China to The Ogun State Government	11/03/2016
37.	Letter from the Ogun State Government to Ogun Guangdong Free Trade Zone	12/04/2016
38.	Letter from Zhongfu International Investment (NIG) FZE to Secretary to the State Government of Ogun State	26/05/2016

39.	Letter from the Ogun State Government to Zhongfu International Investment Nigeria (NIG) FZE	27/05/2016
40.	Letter from the Ogun State Government to The Economic and Commercial Section of the Peoples Republic of China	11/07/2016
41.	Letter from Federal Republic of Nigeria to the Peoples Republic of China	08/05/2020
42.	JVA Structure Chart	Undated
<b>Claimant's Pleadings, Witness Statements, Expert Evidence and written submissions in the Arbitration</b>		
43.	Request for Arbitration	30/08/2018
44.	Consolidated Terms of Appointment	24/04/2019
45.	Witness Statement of Mr. Zheng (John) Xue	29/04/2019
46.	Witness Statement of Professor Issa Baluch	29/04/2019
47.	Witness Statement of Mr Jianxin (Jason) Han (Chinese)	30/04/2019
48.	Witness Statement of Mr Jianxin (Jason) Han (English)	30/04/2019
49.	Witness Statement of Jon Vandenheuvel	30/04/2019
50.	Witness Statement of Mr Wenxiao (Areak) Zhao (Chinese)	30/04/2019
51.	Witness Statement of Mr Wenxiao (Areak) Zhao (English)	30/04/2019
52.	Letter to Tribunal enclosing Statement of Claim and Witness Statements	01/05/2019
53.	Statement of Claim	01/05/2019
54.	Expert Report of Noel Matthews	01/05/2019
55.	Second Witness Statement of Professor Issa Baluch	20/01/2020
56.	Second Witness Statement of Mr Wenxiao (Areak) Zhao (Chinese)	21/01/2020
57.	Second Witness Statement of Mr Wenxiao (Areak) Zhao (English)	21/01/2020
58.	Second Witness Statement of Mr. Zheng (John) Xue	22/01/2020
59.	Second Witness Statement of Dr Jason Han (Chinese)	23/01/2020
60.	Second Witness Statement of Dr Jason Han (English)	23/01/2020
61.	Second Witness Statement of Jon Vandenheuvel	27/01/2020
62.	Letter to Tribunal enclosing Statement of Reply and Witness Statements	31/01/2020
63.	Statement of Reply	31/01/2020
64.	Amended Statement of Reply	12/06/2020
65.	Letter to Tribunal responding to their email of 3 September 2020	11/09/2020
66.	Claimant's Skeleton Argument	05/11/2020
<b>Respondent's Pleadings, Witness Statements and written submissions in the Arbitration</b>		
67.	Jurisdictional Objection/Request for Bifurcation/Request to determine Applicable Law	14/10/2019
68.	Statement of Defence	14/10/2019
69.	Corrected Written Statement of Taiwo Adeoluwa	03/02/2020
70.	Respondent's Statement Of Rejoinder	02/03/2020
71.	Application to Amend Defence and Submit further Jurisdictional Arguments	13/05/2020
72.	Amended Statement of Defence	13/05/2020

73.	Further Jurisdictional Arguments	13/05/2020
74.	Further Rejoinder to the Claimant's Reply	02/09/2020
75.	Addendum to Respondent's Amended Statement of Defence	02/09/2020
76.	Respondent's Closing Submission	13/11/2020
77.	Respondent's Skeleton Argument	05/11/2020
<b>Procedural Orders and the Award</b>		
78.	Procedural Order No. 1	19/02/2019
79.	Tribunal's decision relating to application to re-amend Statement of Defence and amend Statement of Rejoinder	21/09/2020
80.	Tribunal's ruling on Respondent's application made by letter on 24 October 2020 to adjourn hearing and adduce an expert report on quantum and discussed at the CMC on 26 October 2020	26/10/2020
81.	Final Award	26/03/2021
<b>Arbitral Hearing Transcript</b>		
82.	Day 1 – transcript	09/11/2020
83.	Day 2 - transcript	10/11/2020
84.	Day 3 – transcript	11/11/2020
85.	Day 4 – transcript	12/11/2020
86.	Day 5 - transcript	13/11/2020
<b>Exhibits to pleadings and witness statements in the Arbitration</b>		
87.	Exhibit C-36 Cash Receipt of 2011	25/07/2011
88.	Exhibit C-037 Supplementary Agreement	13/04/2013
89.	Exabit C-062 Agreement	15/01/2013
90.	Exhibit C094 Letter from Zenith to OSG	23/04/2014
91.	Exhibit C-121 Auditor's report on special purpose	23/09/2016
92.	Exhibit C-082 Auditor's report and financial statements	23/09/2016
93.	Exhibit C172 Warrant for Mr Zhao	04/08/2016
94.	Exhibit C171 Warrant for Dr Han	04/08/2016
95.	Exhibit C-189 Statement Of Claim	09/09/2016
96.	Exhibit C-188 General Form Of Writ Of Summons	18/08/2016
97.	Exhibit C 217 Memorandum Of Appearance	13/12/2016
98.	Exhibit C-218 Notice Of Preliminary Objection	03/04/2017
99.	Exhibit C-219 Counter-Affidavit Of The Claimant Respondent	05/05/2017
100.	Exhibit C-212 Notice Of Discontinuance	27/03/2018
101.	Exhibit C-213 Application To Withdraw The Case From Court	05/06/2018
102.	Exhibit C 211 Notice Of Discontinuance	27/04/2018
<b>Documents not already on the record as part of Arbitration</b>		
103.	Letter from CAI to Mr Adeoluwa as Secretary to the State Government	16/03/2012
104.	Certificate of Authorization 授权委托书 (English translation)	28/03/2012
105.	Implementation report on the disposal plan of Nigeria Ogun Guangdon Free Trade Zone	25/06/2012
106.	OGFTZ Financial Handover	18/07/2012
107.	Handover document 移交文件 (English translation)	19/07/2012

108.	Confirmation from Zhuhai Zhongfu of the commencement of Entrustment 珠海中富托管确认书 (English translation)	06/09/2012
109.	Handover list of company material To Zhongfu 移交中富公司资料清单 (English translation)	12/10/2012
110.	Handover record of the company seal of GXI (English and Chinese)	12/10/2012
111.	Handover document signed by Jason Han (Page 1)	12/10/2012
112.	Handover document signed by Jason Han (Page 1)	12/10/2012
113.	Handover of Customs Deposit Account of OGFTZ 奥贡广东自贸区海关保证金账户移交清单 (English translation)	18/10/2012
114.	Letter from GXI to Mr Gbenga Kuye, the Managing Director of NEPZA (Page 1)	04/04/2014
115.	Letter from GXI to Mr Gbenga Kuye, the Managing Director of NEPZA (Page 2)	04/04/2014
116.	Letter from GXI to Ogun State (Page 1)	04/04/2014
117.	Letter from GXI to Ogun State (Page 2)	04/04/2014
118.	Certified statement of Notary Public	08/04/2014
119.	Print request from Daniel Che	05/08/2019
120.	Letter from CMS to Withers	23/04/2021
121.	Email from Withers to CMS	23/04/2021
122.	Memorandum on Development of Shareholding Structure of Ogun Guangdong Free trade zone (Received 15.04.2021)	Undated
<b>Legislation</b>		
123.	Companies and Allied Matters Act 2004 s. 54 - Extract	2004